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8 **UNITED STATES DISTRICT COURT**
9 **CENTRAL DISTRICT OF CALIFORNIA**
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11	EDWARD C. PELLEGRINI,)	CV 11-6908 RSWL
12	Plaintiff,)	
13	vs.)	ORDER RE Defendants'
14)	Motions in Limine (Nos.
15	GRENVILLE M. GOODER, JR. et)	1-8) [73]
16	al.,)	
17	Defendants.)	

18 Currently before the Court are Defendants' Motions
19 in Limine Nos. 1-8 [73]. Having reviewed all the
20 papers pertaining to these Motions, the Court **HEREBY**
21 **RULES AS FOLLOWS:**

22 Defendants' Motion in Limine No. 1 to exclude lay
23 witnesses from the courtroom during trial and preclude
24 the parties from disclosing the substance of testimony
25 of other witnesses with non-party witnesses is **GRANTED**.
26 All non-party witnesses shall be excluded from the
27 courtroom, except for expert witnesses, during trial.
28 Further, the Parties shall explain to their own

1 witnesses that they are not to discuss their testimony
2 with any other witness in this case.

3 Defendants' Motion in Limine No. 2 to exclude all
4 references to the sanction previously imposed on the
5 Defendants with regard to discovery disclosures is
6 **GRANTED**. Evidence of Defendants' sanction is not
7 relevant to any of Plaintiff's claims in this Action
8 and should not be presented. Further, Plaintiff has
9 not identified how this evidence is relevant.

10 Defendants' Motion in Limine No. 3 to exclude
11 conclusory statements, improper lay opinions, hearsay,
12 and speculation is **GRANTED in part and DENIED in part**
13 **WITHOUT PREJUDICE**. The Court reminds the Parties that
14 testimony presented at trial must be provided in a
15 manner that complies with the Federal Rules of
16 Evidence. For instance, witnesses may testify only as
17 to matters of which they have personal knowledge. See
18 Fed. R. Evid. 602. Federal Rule of Evidence 602
19 requires the proponent of testimony to lay a foundation
20 as to the witness's personal knowledge. Here, for
21 example, as to anticipated testimony from Plaintiff
22 Pellegrini, although it is clear that he may testify as
23 to matters of which he has direct knowledge--for
24 example, whether he was given certain documents,
25 whether he was provided certain disclosures, and what
26 his investment goals were--it is unclear how Plaintiff
27 Pellegrini would have personal knowledge regarding
28 whether or not Defendants conducted due diligence. If

1 Plaintiff Pellegrini seeks to provide testimony
2 regarding Defendants' due diligence, Plaintiff must lay
3 a foundation prior to introducing such testimony.

4 Further, witnesses cannot provide opinion testimony
5 unless it is based on their rational perception and is
6 helpful. See Fed. R. Evid. 602. For example, as to
7 anticipated testimony from Stephanie Pellegrini, she
8 may testify as to her observations about Plaintiff
9 Pellegrini's manifestations of emotional or physical
10 stress during the period in question, so long as the
11 testimony does not seek to introduce testimony that
12 should be otherwise provided by experts and Plaintiff
13 demonstrates that the usual requirements for personal
14 knowledge and foundation have been met.

15 Finally, hearsay evidence must not be presented
16 unless it falls under one of the hearsay exceptions
17 under the Federal Rules of Evidence. See Fed. R. Evid.
18 801-807. It is unclear from Defendants' Motion how the
19 anticipated testimony will introduce hearsay. However,
20 the Parties may make specific objections at trial
21 should hearsay evidence be introduced by either side.

22 Defendants' Motion in Limine No. 4 to exclude all
23 expert testimony regarding Plaintiff's entitlement to
24 emotional distress and punitive damages, as well as to
25 the amount of damages recoverable in general, is **MOOT**
26 **and DENIED**. First, the Parties have agreed that
27 Plaintiff's expert, Mason Dinehart, will not testify as
28 to punitive or emotional distress damages, investment

1 advisor fees, or interest. Therefore, Defendants'
2 Motion is **MOOT** in this respect. Second, the Court
3 **DENIES** Defendants' Motion to the extent that it seeks
4 to exclude Plaintiff's expert from testifying as to
5 damages suffered from total loss of Plaintiff's
6 investment. Plaintiff's expert is a securities expert
7 and is qualified to determine the amount of loss that
8 Plaintiff Pellegrini has lost due to his investments.
9 Finally, the Court **DEFERS** ruling with respect to
10 Defendants' request that the Court redact and exclude
11 portions of Plaintiffs' expert report, as the Court has
12 not been provided with a copy of Plaintiff's expert
13 report.

14 Defendants' Motion in Limine No. 5 to exclude all
15 evidence, whether presented by expert or lay witnesses,
16 regarding any cause of action or alleged violation of
17 law not contained in Plaintiff's Complaint is **DENIED** as
18 vague. The Court has not been presented with
19 Plaintiff's expert report, which is the basis of
20 Defendants' Motion, and cannot review whether
21 Defendants' objections are proper.

22 Defendants' Motion in Limine No. 6 to exclude
23 opinions, by testimony or reports, of Plaintiff's
24 expert witness, Mason A. Dinehart III is **DENIED in part**
25 **and GRANTED in part**. An expert's testimony must be
26 helpful in assisting the trier of fact. Rogers v.
27 Raymark Indus., Inc., 922 F.2d 1426, 1429 (9th Cir.
28 1991). An expert's legal conclusions are unhelpful to

1 the jury because they provide "no information other
2 than the witness's view of how the verdict should be
3 read." YKK Corp. v. Jungwoo Zipper Co., Ltd., 213 F.
4 Supp. 2d 1195, 1203 (C.D. Cal. 2002) (quoting 4
5 Weinstein's Federal Evidence § 704.04). Defendants'
6 Motion contains a list of 15 statements (numbered 1
7 through 15) from Dinehart's expert report that
8 Defendants purport are "legal conclusions." Defs.'s
9 Mots. in Limine at 34-35. The Court finds that the
10 statements numbered 1 through 8, 12, 13, and 15, do not
11 contain legal opinions, but rather reflect Dinehart's
12 expert opinions, which he is qualified to make because
13 he is a securities expert. However, the statements
14 numbered 9 through 11, and 14, are legal conclusions
15 regarding whether or not Defendants breached various
16 duties, and are excluded.

17 Defendants' Motion in Limine No. 7 to exclude all
18 evidence regarding communications between non-parties
19 and Defendant Gooder relating to rumors concerning
20 Mason Global, Ltd. is **DENIED**. Defendants object to
21 Plaintiff's Exhibits G and H, which are copies of
22 emails that were sent to Defendant Gooder in 2004 and
23 2005. To the extent that Plaintiff Pellegrini will
24 offer the emails to show effect on hearer, the emails
25 are not hearsay. See Fed. R. Evid. 801. The Court
26 also finds that the emails' probative value is not
27 substantially outweighed by the danger of unfair
28 prejudice. Fed. R. Evid. 403. The emails are

1 probative because they tend to show that at the time
2 Plaintiff began investing in Mascon, Defendants had
3 opinions from various consultants about Mascon. These
4 emails formed the total mix of information that
5 Defendants had prior to their recommending Mascon as an
6 investment to Plaintiff. As Defendant Gooder is
7 testifying at trial, if it is true that Defendant
8 Gooder considered these emails, he may be able to
9 explain why he did or did not give them weight.

10 Finally, Defendants' Motion in Limine No. 8 to
11 exclude all evidence and references to Plaintiff's
12 breach of contract claim against Defendants Gooder and
13 Platt as individuals is **GRANTED**.

14
15 **IT IS SO ORDERED.**

16 DATED: December 6, 2012.

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19 **RONALD S.W. LEW**

20 **HONORABLE RONALD S.W. LEW**

21 Senior, U.S. District Court Judge
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